



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR98-0136

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112517.

The Travis County Sheriff's Office (the "county") received a request for "all employment records . . . on officer Paul Cossette." You state that the county has released to the requestor most of the requested information. You assert that portions of the requested information are excepted from public disclosure based on sections 552.101, 552.108, 552.117 and 552.130.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We have reviewed the requested information. We conclude that the county must withhold from disclosure Exhibit A and the information we have marked in Exhibit C based on section 552.101 in conjunction with the common-law right to privacy .

Section 552.101 also protects information made confidential by statute. You raise several Labor Code provisions in regard to the worker's compensation account numbers and code numbers on documents in Exhibit B. Section 402.083(a) of the Labor Code reads as follows:

Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Workers' Compensation] [C]ommission except as provided by this subtitle.

This provision makes confidential only information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims. *See* Open Records Decision No. 619 (1993). This office has determined that a claimant's insurance identification number implicitly discloses a claimant's identity. *See* Open Records Letter No. 94-068 (1994). With the exception of the social security numbers, it is not clear to this office that the numbers at issue are insurance identification numbers or information that otherwise explicitly or implicitly discloses the identity of a claimant. In any case, section 402.083(a) applies to information maintained by the Texas Workers' Compensation Commission.

Section 402.086(a) of the Labor Code reads as follows:

Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Assuming the numbers in Exhibit B are claimant identification numbers, the county must not release the numbers to the requestor based on section 552.101 of the Government Code in conjunction with section 402.086(a) of the Labor Code.

You assert that Exhibit D must not be released to the requestor based on section 550.065 of the Transportation Code. Exhibit D contains a Texas Peace Officer's Accident Report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Exhibit D also contains other information.

The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, S.B.1069, § 13, 75th Leg., R.S. However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n. v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final

hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth et al.* 163 Tex. 616, 617 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as the last, actual peaceable, non-contested status that preceded the pending controversy. *Texas v. Southwestern Bell Telephone Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of SB 1069 is governed by section 47 of article 6701d, V.T.C.S.¹

Section 47(a) of article 6701d, V.T.C.S. makes confidential accident report forms completed pursuant to chapter 550 of the Transportation Code. V.T.C.S. art. 6701d § 47(a). Section 47(b)(1) of V.T.C.S. article 6701d provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

. . . .

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1). Under this provision, a law enforcement agency is required to release a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, you state that the requestor has not provided the county with the requisite information to entitle her to the accident report. Accordingly, the accident report is made confidential by section 47(a) and must not be released. The remaining information in Exhibit C does not appear to be subject to chapter 550 of the Transportation Code.

¹Effective September 1, 1995, article 6701d was repealed and codified as part of the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71. See Trans Code § 550.065 (release of accident report). The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of V.T.C.S. article 6701d remains in effect as current law and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

You raise section 552.108(b)(1) of the Government Code as an exception to the public disclosure of the officer's direct work telephone and work pager numbers. Section 552.108(b)(1) reads as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

Your argue that release of the numbers would interfere with law enforcement of prosecution because "public access to such numbers would defeat the purpose of these number, which is to ensure immediate access to law enforcement officer." Since these numbers are those of an employee with specific law enforcement responsibilities, we agree. *See* Open Records Decision No. 506 (1988). Accordingly, the county may withhold the numbers from public disclosure based on section 552.108(b)(1) of the Government Code.

Section 552.117 of the Government Code provides in part as follows:

Information is excepted from [required public disclosure] if it relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 52.212, Education Code, regardless of whether the officer complies with Section 552.024 [of the Government Code].

We assume the officer is a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the county must not release the section 552.117 information. We note that section 552.117 covers the officer's former addresses. However, the provision does not apply to information about the officer's friends and coworkers.

Finally, you raise section 552.130 of the Government Code in regard to the driver's license numbers in the exhibits. Section 552.130 excepts from required public disclosure information that "relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state." Thus, the county must not release the driver's license numbers.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Hastings". The signature is fluid and cursive, with the first name "Kay" being more prominent.

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 112517

Enclosures: Marked documents

cc: Ms. Melinda Johnson
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(w/o enclosures)